

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARY H. RAMSEY, et al.,

Plaintiffs,

-against-

MEMORANDUM & ORDER
99-CV-4341(ERK)

DISTRICT 141, INTERNATIONAL
ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS, et al.,

Defendants.

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Korman, Ch. J.

The recommendation of the United States magistrate judge relating to plaintiff's fee application is adopted. The objection to the R&R relates to the reduction of the fee award to take into account unsuccessful claims against a third party. I assume familiarity with the underlying facts.

As a general matter there is no hard and fast rule precluding a judge from weighing unsuccessful or withdrawn claims in determining an award of counsel fees. See Green v. Torres, 361 F2d 96, 99 (2d Cir. 2004). More significantly, in this case the unsuccessful claims weighed by the United States magistrate judge involved claims against a different defendant than the one against whom plaintiff ultimately succeeded, and those claims would not have provided "a common benefit" to the rest of the union membership - the predicate for the award of counsel fees. R&R at 7, n. 1.

There are simply no considerations of policy for awarding counsel fees for the

prosecution of such claims against a third party, and the United States magistrate judge correctly weighed the cost of the prosecution of those claims in determining the fee award.

SO ORDERED:

Brooklyn, New York
June 23, 2005

Edward R. Korman
United States Chief District Judge